IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL APPILCATION NO.319 OF 2005
IN
WRIT PETITION NO.9061 OF 2004

Maharashtra State Electricity Board)..Applicant

Versus

M/s.Datar Switchgear Ltd. and others)..Respondents

Mr.C.J.Sawant with Ms.Deepa Chavan i/b.M/s.Little & Co. for the Applicant.

Mr.Rafique Dada with Mr.Chirag Balsara i/b.Shaunak Satpute & Co. for Respondent No.1.

Mr.Shirish Gupte with Mr.Y.S.Jahagirdar i/b.Shaunak Satpute for Respondent No.2.

Mr.Shekhar Naphade with Mr.Vaibhav Joglekar i/b.Shaunak Satpute & Co. for Respondent No.3.

Mr.S.R.Nargolkar, A.G.P., for Respondent No.4.

CORAM: V.G. PALSHIKAR AND
SMT.NISHITA MHATRE, JJ.

DATED: 10TH FEBRUARY 2005

P.C.:

. By this Civil Application, the original Petitioner Maharashtra State Electricity Board, seeks amendment of the Writ Petition to add the Advocate General of Maharashtra as party Respondent and had a claim in its prayers that he is liable to exercise his jurisdiction under the Maharashtra Vexatious Litigation (Prevention) Act, 1971 (hereinafter referred to as "the

Act").

2. The prayers in the main Writ Petition No.9061 of 2004 read as under :-

(a) Direct that no proceedings, civil or criminal, shall be instituted by the Respondents No.1 to 3 and/or any other officials of the Respondent No.1 against/concerning the MSEB, its officers, ex-officers and the professionals engaged by the MSEB in any court in the State of Maharashtra without the leave of this High Court.

(b) Issue a writ of certiorari or any other writ in the nature of certiorari or any other appropriate writ, order or direction, calling for the record and proceedings of the Criminal Complaints detailed in the Exhibit F hereto and after going into the legality, validity and propriety of the same, declare the same as being vexatious and frivolous and restrain the Respondent Nos.1 to 3 from proceeding further with the said complaints.

(c) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to stay the proceedings detailed in the Exhibit F hereto, forthwith.

(d) Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be pleased to direct that no proceedings, civil or criminal, shall be instituted by the Respondents No.1 to 3 and/or the employees/ agents of the Respondent No.1 against/ concerning the MSEB, its officers, ex-officers and the professionals engaged by the MSEB in any court in the State of Maharashtra without the leave of this Hon'ble High Court.

(e) Ad-interim reliefs in terms of prayer clause (c) and (d) above.

(f) Such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(g) Costs of this Writ Petition be provided for.

From perusal of the prayers in general and particularly prayer (b), it is obvious that the original Petitioner desired an order under the Maharashtra Vexatious Litigation (Prevention) Act, 1971 that the Respondents be restrained from filing any criminal proceedings without prior permission as contemplated by the Act.

3. The question raised today is whether this Civil Application which seeks an amendment to the above prayers in the Petition, is in civil nature or criminal. In our opinion, such dispute need not be entertained for the simple reason that the main Petition obviously pertains to criminal proceedings and, therefore, any application in such proceedings would be an application in criminal Writ Petition. We, therefore, direct that Writ Petition No.9061 of 2004 be treated as Criminal Writ Petition in view of the settled position of law as laid down by this Court in the case of *Nagpur Cable Operators' Association* vs. *Commissioner of Police, Nagpur and another*, reported in **1995 II Mh.L.J. 753**.

4. This Civil Application and the Writ Petition hereafter be listed before Bench designated by My Lord the Chief Justice for hearing criminal matters.